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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 4th March 1953

S.R.O. 456.—WHEREAS the election of Shri Trailakya Nath Pradhan of Village Teghari, P. O. Kalindi, District Midnapore, as a member of the West Bengal Legislative Assembly from the Ramnagar constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Balailal Das Mohapatra of Lalpur, P. O. Sishusadan, District Midnapore, West Bengal;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, WEST BENGAL

ELECTION PETITION No. 122 OF 1952

ELECTION CASE NO. 5 OF 1952 OF WEST BENGAL

Coram

Sri S. C. Ray Chaudhuri, M.A., LL.B.—*Chairman*

Sri M. N. Gan, M.A., LL.B.,

Sri Sudhir Kumar Bhose, M.Sc., LL.B.—*Members of the Tribunal.*

In the matter of an application under Section 81 of the Representation of the People Act, 1951

And

In the matter of Balailal Das Mohapatra, residing at village Lalpur, P. O. Sishusadan, District Midnapore—*Petitioner.*

Versus

(1) Trailakya Nath Pradhan, residing at village Teghari, P. O. Kalindi, district Midnapore,

(2) Hemanta Kumar Das, residing at Contai, P.O. Contai, district Midnapore,

(3) Satish Chandra Kundu, residing at village Jagadishpur, P. O. Raghunathpur, district Midnapore,

(4) Jiban Krishna Das Mahapatra, residing at village Lalpur, P. O. Sishusadan, district Midnapore,

(5) Sarat Chandra Pattanayak, residing at village Danda Belbani, P. O. Sishusadan, district Midnapore—*Respondents*.

FOR PETITIONER:

- (1) Sri S. Roy.
 (2) Sri S. Mukherjee. } *Counsel*.
 (instructed by Sri Pronab Ghosh, Solicitor).

FOR RESPONDENT:

- (1) Sri Purnendu Sekhar Basu—*Advocate*.
 with him
 (2) Sri S. N. Ghorai—*Counsel*.
 (3) Sri Kaustav Kanti Karan—*Pleader*.

The 24th February, 1953

JUDGMENT

The Petitioner, Balailal Das Mahapatra is a defeated candidate in the election to the Legislative Assembly of West Bengal from Ramnagar Constituency, District Midnapore. The Respondent No. 1, Trailakya Nath Prodhan is the returned candidate. The Respondents Nos. 2 and 3 were two other contestants. Other two Respondents Nos. 4 and 5 withdrew their candidature after nomination. The election was held on 21st January, 1952, and the result was declared on 26th January, following. The successful candidate was found to have polled 10,599 valid votes and the Petitioner 10,584 valid votes. The difference was only 15. The Respondent No. 1, Trailakya Nath Prodhan was declared to have been duly elected.

At the Polling Station No. 45, Kadua U.P. School, within the Constituency, there was arrangement to take votes for the Assembly Constituency and also for a House of the People Constituency. Ballot papers with green-coloured borders intended for the House of the People votes and with chocolate-coloured borders intended for the Assembly votes bearing separate series of serial numbers, were supplied to the Presiding Officer of the Polling Station. There was interchange of ballot papers at the time of distribution, ballot papers with green borders were issued to the Assembly voters and those with chocolate borders to the House of the People voters. When the counting was held on 26th January the wrong ballot papers found in the Assembly ballot boxes of all the candidates were not taken into account and rejected. But when, subsequently the House of the People votes were counted the wrong chocolate-colour bordered ballot papers were taken into account and accepted as valid votes.

The number of votes polled at the said Kadua Polling Station No. 45 in favour of the Petitioner was 140 and that in favour of the returned candidate Trailakya Nath Prodhan was 110. If those votes had been accepted as valid the Petitioner would have got a clear majority i.e., his deficiency by 15 would have been made up and his number would have exceeded by 15. The Petitioner raised objection but the Returning Officer refused to take into account the said Kadua votes.

This Election Petition has been presented under section 81 of the Representation of the People Act, 1951, calling into question the election of the returned candidate as the result of the said election has been materially affected, *inter alia* by the improper refusal of valid votes duly cast by lawful voters of the constituency and/or by non-compliance with the provisions of the Representation of the People Act, 1951 and/or 1950, and/or the rules relating to the election, and/or by a mistake in the use of the prescribed forms.

Prayers have been made for declaring the election of the Respondent No. 1, Trailakya Nath Prodhan void under Section 100(2) (c) of the Representation of the People Act, 1951, and/or for declaring the Petitioner Balailal Das Mahapatra as duly elected under Section 101(a) of the said Act, for receiving a majority of the valid votes.

The Respondent No. 1, Trailakya Nath Prodhan contests the case. Other Respondents duly served with notices and copies of the Election Petition, do not appear.

The defence of the Respondent No. 1 is, that the election was legal, valid, and was in strict compliance with law: that no objection was taken by the petitioner or his counting agent questioning the correctness of the order of rejection of the

ballot papers of Kadua Polling Station by the Returning Officer: that the petitioner is estopped under the law, having accepted or acquiesced in the rejection of the said ballot papers, from questioning the decision of the Returning Officer after the announcement of the result of the election: that the decision of the Returning Officer as to the validity or otherwise of the ballot papers being final, this Tribunal cannot go into that question and reopen the matter or review the same: and that the Election Petition does not disclose any cause of action, hence it is not maintainable.

The following Issues as amended during hearing arise for decision.

Issues

1. Is the election petition maintainable?
2. Are the votes cast in station No. 45 valid and should have been taken into account at the time of counting of the votes as valid votes?
- Is the Petitioner estopped from raising this question?
3. Has the result of the election been materially affected by the rejection of the votes polled at Station No. 45 or by any non-compliance with the provisions of the Constitution or of the R. P. Act, 1951, or of any rules or orders made under the said Act, or of any other Act or rules relating to election or by any mistake in the use of any prescribed form?
4. Did the Petitioner obtain a majority of the valid votes cast at the said Election and should be declared elected?
5. What relief, if any, is the Petitioner entitled to?

DECISION

1st Issue.—No separate issue has been framed on the question of the jurisdiction of the Tribunal to entertain the Election Petition. In paragraph 5(c)(iv) of the written statement it has been stated that, "the decision of the said Returning Officer as to the validity or otherwise of the ballot papers being final the Tribunal cannot go into the question and reopen the matter or review the same". On the question of maintainability there is only the vague allegation in paragraph 8 of the written statement that the Election Petition discloses no cause of action. The question of jurisdiction is discussed with this issue.

Article 324(1) of the Constitution provides for the "appointment of Election Tribunal for decision of doubts and disputes arising out of or in connection with elections". Under Article 329(b) no election shall be called in question except by an election petition presented to appropriate authority provided for by or under the law, i.e. the Election Tribunal. Sri Purnendu Sekhar Basu, Advocate for the Respondent No. 1, attempts to interpret the expression "arising out of or in connection with the elections" as referring to doubts and disputes expressed in the course of election prior to the announcement of the result. It is contended by him that no dispute or objection was raised at the time of the counting of votes or before the declaration of the result, hence the Election Tribunal has no jurisdiction to decide the alleged objection. Such restricted interpretation is not justified and is not acceptable to us. We are unable to accept this contention as sound, for many questions in connection with elections do crop up subsequent to the declaration of the result e.g. disputes regarding election expenses, objection as to major and minor corrupt practices enumerated under Sec. 123 and 124 of the Representation of the People Act, which cannot be raised prior to the declaration of the result of the election before any court or tribunal. In the Preamble to the Representation of the People Act, 1951, similar expression has been used evidently not to restrict application to doubts and disputes raised in the course of the election. To our mind the language of the expression "arising out of or in connection with" used in the Constitution and in the Preamble to the Representation of the People Act, 1951, is as broad as it should be, broad enough to include each and every possible doubt or dispute in an election. Further Rule 47 (4) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, makes the position abundantly clear. It runs thus, "The decision of the Returning Officer as to the validity of a ballot paper contained in a ballot box.....shall be final subject to any decision to the contrary given by a Tribunal on the trial of an Election Petition calling in question the election". In this case there are allegations in paragraph 7(h) of the Election Petition about placing facts before the Returning Officer during refusal to take into account the votes, implying thereby that protests were entered. Some evidence has also been adduced to prove that the validity of the order of refusal was questioned at the time of the rejection of the votes. The learned Advocate for the Respondent

contends that the ballot papers given to the electors of the Legislative Assembly at Kadua Polling Station were no ballot papers at all, as they did not answer the descriptions given in Rule 28 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, and as such they were legally and rightly rejected under Rule 47(1)(c) of the said Rules, hence the decision as to the validity of such ballot papers which are to be deemed as no ballot papers cannot be questioned before the Tribunal under Rule 47(4). This contention does not at all appear to be sound. The Election Tribunal which is competent to go into the merits of the questions of the improper reception or refusal of a vote or the reception of any vote which is void, is, by parity of reasons, equally competent to decide if the ballot papers in question were in the eye of law no ballot papers, or they can be deemed as valid ballot papers. Further, it is conceded that the result of the election has been materially affected, as a large number of electors could not validly exercise their electoral right which has been given to them under Article 326 of the Constitution for no fault of theirs. The Election Tribunal is the only forum where proper remedies for such gross irregularities and illegalities can be sought. The objection that the Tribunal has no jurisdiction to entertain Election petitions impugning such order of refusal of votes, does not therefore stand to reason. It is accordingly overruled.

The objection regarding maintainability which has been vaguely taken is also untenable. Under Article 324(1) of the Constitution and the Preamble to the Representation of the People Act, 1951, all doubts and disputes arising out of or in connection with the elections, whether taken in the course of the election or after the publication of the result of the election can certainly be decided by the Election Tribunal constituted under law. In this case objection against validity of the order of rejection of the ballot papers was verbally raised at the time of counting of the votes, as stated by the petitioner in his evidence and corroborated by his witness No. 5, Jamuna Kumar Bose, Head Clerk of the Election Department, Contai, Dt. Midnapore. The fact has substantially been mentioned in paragraph 7 (b) of the Election Petition. The denial on the point in paragraph 5(c) of the written statement has not even been verified. The learned Advocate for the Respondent referring to Ext. A, a petition for recount of votes, argues that in the said petition no mention was made as to the invalidity of the order of rejection of the ballot papers, hence no objection was actually raised on the point at the relevant time. We do not think that it was necessary to refer to the petition for recount of votes, the objection regarding rejection of ballot papers. A reference to the endorsements on the rejected ballot papers confirm the assertion of the petitioner that objection was raised, as the ground of rejection was briefly noted, as required under Rule 46(1)(vii). It is argued that the Returning Officer should have been examined on the point to adduce the best evidence. Considering the facts and the circumstances of the case, the examination of the Returning Officer is not deemed essential. We hold that the Election Petition discloses good cause of action and it is quite maintainable.

Issues Nos. 2 and 3.—These allied Issues are discussed together.

In the second part of Issue No. 2 the question of estoppel has been raised. In paragraph 5(c)(iii) of the written statement allegation has been made that the Petitioner acquiesced in and accepted the order of rejection of the ballot papers of Station No. 45, which were not valid in accordance with law, hence he is estopped under the law to question the decision of the Returning Officer after the announcement of the result, finding himself defeated in the contest. The Respondent No. 1 does not adduce any evidence in support of such allegations. The story of acceptance or acquiescence by the Petitioner has not only been categorically denied, but on the other hand evidence of verbal protest has been given by the Petitioner himself and his witness, Jamuna Kumar Basu, as already noticed. The endorsements on the back of the rejected ballot papers also lend support. The petitioner, accordingly, did not stand by or silently acquiesce, though he was under no legal obligation to raise objection at that stage. Neither did he permit the respondent to believe something contrary to what he has now stated. The rule of estoppel is founded upon the doctrine laid down in *Pickard Vs. Sears* (1837) 6A and E 469(474) that where a person by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position the former is precluded from availing against the latter, a different state of things as existing at the same time". The law in India is the same as enunciated in the Privy Council Case of *Sarat Chandra Dey vs. Gopal Chandra Laha* (19 I.A. 203) and embodied in Section 115 of the Indian Evidence Act. This doctrine is not a rule of equity, but is a rule of evidence. In the absence of any evidence on

the Respondent's side and in view of the contrary evidence adduced on Petitioner's side, no question of estoppel can arise. This question is thus answered in the negative.

Now, the ballot papers of Polling Station No. 45, Kadua U.P. School, found in the ballot boxes of all the contesting candidates were rejected by the Returning Officer under Rule 47(1)(c), as they did not bear the proper serial numbers and distinguishing marks. The Returning Officer noted on the ballot papers, "Rejected H. P. ballot paper". Under Rule 46 (1)(vii), the Returning Officer is to record briefly on the ballot paper the ground for its rejection, if any candidate or his election or counting agent questions the correctness of the rejection. The endorsements of the Returning Officer on the ballot papers clearly indicate that the correctness of the order of rejection was challenged. The Assembly ballot papers and the Parliamentary ballot papers were of similar light red colour. On the left margin of the Assembly ballot paper there is a chocolate coloured bar near the left margin and on the Parliamentary ballot paper the distinguishing mark is a green-coloured bar near the left margin. We have examined the ballot papers. The distinguishing marks of the two kinds of ballot papers require a close observation to notice the difference in the colours of the bars printed on light red ground. There was interchange of the ballot papers apparently due to inadvertence or negligence on the part of the Presiding Officer as well as the Polling Officers of the Station. The voters were to cast votes at the same station both for the Assembly election and Parliamentary election in different compartments. Besides the distinguishing marks of bars of different colours, there are separate series of serial numbers printed on the two kinds of ballot papers. If the officers cared to look to the serial numbers of ballot papers received for the different constituencies, the mistake could have been detected. The procedure of polling was followed according to law as the evidence of P.W.1. Debendra Nath Das Mahapatra, the Polling Agent of the Petitioner, discloses. Two sets of ballot papers were distributed by the different Polling Officers. The Assembly votes were first cast and after that the voters received Parliamentary ballot papers to cast votes in a different compartment, where the Parliamentary ballot boxes were kept. The electors acted in good faith and had no occasion to make any confusion. The Presiding Officer did not report to the authorities the gross irregularity which took place on account of the fault of the officers. Timely report could prevent unnecessary harassment and expenses on account of this Election Petition. The colours of the distinguishing marks are not indicated by any Rule. The Election Commission is authorised under Rule 28 to decide what will be the distinguishing marks. The Bombay Election Tribunal has decided a similar case of interchange of ballot papers, brought by Gidwani Chaitram Partabrai, the Judgment of which has been published in the Bombay Government Gazette, Extraordinary, Friday, the 29th August, 1952. We got from the said judgment placed before us that the Election Commission issued instructions that, "if the inter-change of voting papers is discovered during the progress of the poll, the Presiding Officers are directed to continue with the same variety of ballot papers for either election right till the end, and then report the matter to the Returning Officer who would immediately obtain Commission's amended directions regularising the issue of a wrong variety of ballot papers. If, however, the mistake is discovered in the course of the counting of a particular ballot box or boxes, the Commission would not regularise the mistake". Under Section 59 of the Representation of the People Act, 1951, "At every election where poll is taken vote shall be given by ballot in such manner as may be prescribed". "Prescribed" is defined by Section 2(g) of the said Act to mean prescribed by Rules made under the Act. The Rule-making power is conferred by Section 169 of the Act, which provides that "the Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act". Rule 28 requires that the ballot paper "shall contain a serial number and such distinguishing marks as the Election Commission may decide". As the Election Commission is to decide what serial numbers and distinguishing marks would be used in the ballot papers of the Assembly and Parliamentary elections the Election Commission has every right to make any amendment regarding the use of the serial number and the distinguishing mark at any stage prior to the actual commencement of the counting of votes under Rule 18. No instruction to regularise any mistake in the use of ballot papers discovered in the course of counting can be issued by the Election Commission, evidently because, as soon as the counting is commenced under Rule 46, it is to be continued till the declaration of the result of the election at the close of the counting, unless there be any case of fresh poll as contemplated in Section 58 of the Representation of the People Act, 1951. In this case the Returning Officer did not report the irregularity till after the declaration of the Assembly election result. Subsequent report was sent to the Election Commission as will appear from the copies of Radlograms. Exts. B. & C. The Election Commission approved

of the action of the Returning Officer rejecting as invalid the Parliamentary ballot papers used in the Assembly election noticed in the course of counting of the votes in Ramnagar Assembly Constituency, but regularised the mistake in the case of the House of the People Constituency for use of Assembly ballot papers, as the Parliamentary votes were counted subsequently. Now the position has become somewhat anomalous as the wrong ballot papers used for the Assembly election were rejected, whereas the corresponding mistake was regularised and the Assembly ballot papers were accepted as valid for the Parliamentary election.

The question now is, whether the mistake which could not be regularised by the Election Commission can now be set right by the Election Tribunal. It has been argued by the learned Counsel for the Petitioner that the Rules framed for the conduct of Elections and Election Petitions are not mandatory, but they are directory and as such substantial compliance will be sufficient. This view has been supported by the Bombay Election Tribunal in deciding the similar case of interchange of ballot papers to which we have already referred. That Tribunal had the benefit of the views of the learned Advocate General of Bombay who had been invited under Section 89 of the Act to appear and assist the Tribunal. We may quote from the Bombay judgment, the views expressed by the learned Advocate General of Bombay. "In his opinion the question at issue is a very narrow one. Rule 47(1)(c) provides for the rejection by the Returning Officer of a ballot paper if it bears any serial number or mark different from the serial number or mark authorised for use at a Polling Station or a Polling Booth. His argument is that the ballot papers issued by the Presiding Officer at the Polling Station actually bore the serial number and marks authorised for use at the Polling Station. Whether the ballot papers meant for the Bombay Assembly were issued instead of the ballot papers meant for the House of the People made no difference *per se* as they were all authorised for use at the Polling Station. When the Presiding Officer gives a ballot paper to a voter he authorises the voter to use the same. If the voter has given the vote that vote according to the said learned Advocate General should be held to be valid unless it is proved that he was misled by the ballot paper in giving his vote to the party for whom he did not intend to vote. It is plain enough that where the object of a Statute is clear and it contains an absolute and mandatory enactment, the terms of that enactment must be strictly followed. But in *Woodwards Vs. Sarsons* Law Reports 10 C.P. 733, the court held that a different principle applied to the schedule of the Ballot Act which contained rules and regulations for carrying out the object of the enactments in the body of the Act. It was considered that those regulations were directory only and that it was sufficient if they were obeyed substantially. In this connection the following passage from *Maxwell's Interpretation of Statutes* (8th Edition), page 326 might be profitably quoted: "Where the prescriptions of a Statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, when an Act ordered a thing to be done by a public body or public Officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time." In this connection we may refer to the view expressed in "American Jurisprudence", Volume 18, Section 164, pages 288-289, discussing American cases on Elections to the following effect "in view of the drastic results which often times would result from a literal interpretation of Statutes it is the tendency of the decisions to restrict the exceptions which exclude the ballot rather than to extend them and to admit the ballot if the spirit and intention of the law is not violated, although a literal construction would vitiate it. Thus, the use through an honest mistake of colored ballots in place of white as required by law will not invalidate the election, where the party used the colored ballots."

In the case before us the Presiding Officer of the Kadua Polling Station was supplied with two sets of ballot papers bearing separate serial numbers and separate distinguishing marks for use in the different Constituencies, one of the Assembly and another of the Parliament. The votes were cast as a matter of fact in two different booths at the same station. Of course in the Bombay case accepting the views of the learned Advocate General it was observed that provisions of Rule 47(1)(c) have been literally complied with as the ballot papers authorised for use at the Polling Station were distributed to the voters. We are unable to accept the view that there was literal compliance as Rule 28 refers to

serial number and distinguishing mark to be used at a particular election. The mere fact that at the same Polling Station votes of two different elections were being taken, does not in our opinion support the view that the serial number and distinguishing mark assigned to ballot paper of one election if used in registering votes of the other election, there would be literal compliance. However, if the Rules be directory and not mandatory the strict meticulous compliance with the provisions of Rule 47 (1)(c) should not be insisted, but substantial compliance would be imperative. We hold that rules framed under Section 169 of the Representation of the People Act, 1951, for the Conduct of Elections and Election Petitions are directory and not mandatory. The fact that the Election Commission has been given powers to decide what serial numbers and distinguishing marks should be assigned to the ballot papers to be used at an election, confirms this view. In the present case the procedure laid down for registering votes of the electors has practically been followed with meticulous accuracy. There was no doubt, in fact, in the mind of the electors that the ballot papers with green bars were intended for casting Assembly votes. The voters were not misled in any way. Only the ballot papers with green bars were issued for the Assembly votes. The voters clearly indicated their intention to vote for the candidate of their choice regarding the Assembly seat. There was no question of any fraud, undue influence or any bad motive in the mind of anybody, nor of benefiting any particular candidate by the use of the ballot papers with green bars for the Assembly Constituency. The principles of ballot voting have been followed meticulously. The voters had no control over the matter. We may quote the observation in Parker's Election Agent and Returning Officer, 5th Edition, page 197 that, "when the matter is one over which the voter has no control, the vote is not to be considered bad by reason of an omission or error of an officer".

The learned Advocate for the Respondent concedes that as the result of the election has been materially affected by the rejection of the votes polled at Kadua Polling Station, the election of the returned candidate should be declared void, but he contends that fresh election should be held. This contention can only be acceptable if it be held that the votes cast at Kadua Polling Station cannot be taken into account as valid votes. If, on the other hand, the Kadua votes be accepted as valid votes in spite of the use of the wrong ballot papers, no fresh election will be necessary. We have already decided that the Rule in question is directory and not mandatory and that there has been substantial compliance as the procedure laid down for the proper conduct of the election has been strictly followed. The Tribunal accordingly holds that the Kadua votes should be accepted as valid votes. These Issues are accordingly disposed of in favour of the Petitioner.

4th Issue.—Excluding the Kadua votes, 10,584 votes were polled in favour of the Petitioner and 10,599 votes in favour of the Respondent No. 1, Trailakya Nath Prodhan. Trailakya Nath Prodhan had a majority of 15 votes. At Kadua Polling Station the Petitioner obtained 140 votes while the Respondent No. 1, Trailakya Nath Prodhan secured 110 votes. In view of the decision of the Tribunal these votes should be added. Hence the total number of valid votes secured by the petitioner Balailal Das Mahapatra goes up to 10,724 and the total number of valid votes polled in favour of the Respondent No. 1, Trailakya Nath Prodhan becomes 10,709. Thus the Petitioner, Balailal Das Mahapatra obtains a majority of valid votes as his number exceeds that of the Respondent No. 1. Trailakya Nath Prodhan by 15. Under Section 101(a) of the Representation of the People Act, 1951. "If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Tribunal is of opinion: (a) that in fact the petitioner or such other candidate received a majority of the valid votes, the Tribunal shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected". In this case it has been established beyond any manner of doubt that the Petitioner, in fact, received a majority of the valid votes. The Petitioner is accordingly entitled to a declaration that he has been duly elected. No question of any fresh election therefore arises.

5th Issue.—The result is, that the Election Petition be allowed and the Petitioner be declared under Section 101(a) of the Representation of the People Act, 1951, that he has been duly elected to the Legislative Assembly from Ramnagar Constituency, District Midnapore. Considering the fact that the petition here succeeds not due to any fault or laches of the respondent who contests, but due to breach of rules by the Officers conducting the election, we do not allow any costs to the petitioner. We direct that the parties do bear their own costs in this case.

ORDER

It is hereby ordered that the Election Petition be allowed and the election of the returned candidate, Trailakya Nath Prodhan, Respondent No. 1, be declared void and the Petitioner Balailal Das Mahapatra be declared under Section 101(a) of the Representation of the People Act, 1951, to have been duly elected from Ramnagar Assembly Constituency in the District Midnapore. Each party is to bear his own cost.

(Sd.) S. C. RAY CHAUDHURI, *Chairman*,
Election Tribunal.

(Sd.) M. N. GAN, *Member*,
Election Tribunal.

The 24th February, 1953.

Dictated by me and corrected.

(Sd.) SUDHIR KUMAR BHOSSE, *Member*,
Election Tribunal.

S. C. RAY CHAUDHURI, *Chairman*,
Election Tribunal.

[No. 19/122/52-Elec.III]

S.R.O. 457.—WHEREAS the election of Shri Krishna Gopal Das, as a member of the Legislative Assembly of the State of Bihar from the Narainpur Constituency of that Assembly has been called in question by an Election Petition (Election Petition No. 191 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Rameshwar Prasad Singh, S/o Shri Sarada Prasad Singh, Village Upperdih, P. S. Madhupur, Sub-Division Deoghar, District Santal Parganas (Bihar);

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, HAZARIBAGH

PRESENT:—

Shree S. B. Sengupta—*Chairman*.

Shree Govind Saran—*Member*.

Shree Nirmal Krishna Ghose—*Member*.

(In the matter of election petition to the Bihar Legislative Assembly from Narainpur Constituency, District Santal Parganas, State of Bihar)

Rameshwar Prasad Singh—*Petitioner*.

Versus

- (1) Krishna Gopal Das, (2) Kumar Kali Singh, (3) Bhagirath Prasad Singh, (4) Md. Yasin Ansari, (5) Damodar Narain Singh, (6) Sambhu Charan Prasad, (7) Abdul Hamid and (8) Kedar Nath Pandey—*Respondents*.

This is an election petition filed by Shree Rameshwar Prasad Singh for declaring that the election held in Narainpur Constituency, District Santal Parganas is wholly void. The petitioner was not a candidate at the last election. He is an Elector in Narain Constituency, he being voter No. 144 of village Upardih, P. S. Madhupur within Narainpur Constituency. The only ground on which the petitioner prays for declaring the election to be wholly void is that the nomination papers of Shree Kedarnath Pandey (respondent No. 8) was wrongly and illegally rejected by the Returning Officer and this illegal rejection of his nomination papers materially affected the result of the election. Shree Kedarnath Pandey (respondent No. 8) has filed a written statement supporting the election petition fully. Respondent No. 7 Moulvi Abdul Hamid, who was a defeated candidate from the same Constituency, has also filed a separate written statement supporting the election petition. Shree Krishna Gopal Das (respondent No. 1), who is the returned candidate, contests the election petition and in his written statement he opposes the election petition on various grounds.

Ten issues were framed, out of which issue Nos. 4, 5 and 8 relate to the rejection of the nomination papers of respondent No. 8, Shree Kedar Nath Pandey. These three issues are as follows:—

Issue No. 4.—Have the nomination papers of respondent No. 8 been validly and properly rejected?

Issue No. 5.—Were the nomination papers of respondent No. 8 valid and in accordance with the provisions of law and statutory rules?

Issue No. 8.—Is acceptance of nomination papers by the Returning Officer under section 33 of the Representation of the People Act 1951 a bar to the rejection of nomination papers on scrutiny under section 36 of the Act? Did the respondent No. 8 ask permission to correct the nomination papers?

We at first take up these three issues, raised on the allegations made in the election petition.

The facts leading to the rejection of the nomination papers filed by Shree Kedar Nath Pandey by the Returning Officer are that Shree Kedar Nath Pandey filed three nomination papers before the Returning Officer on 24th November 1951. 27th November 1951 was the date fixed for scrutiny of the nomination papers filed by the candidates. There were eight candidates whose nomination papers were scrutinised on that date, including the nomination papers of Shree Kedar Nath Pandey. In each of the three nomination papers filed by Shree Kedar Nath Pandey columns 5 and 8 were filled thus:—

Col. 5: Address—Thana Madhupur, Mauza Baherabank No. 66 (sixty-six) Post Madhupur, Sub-division Deoghar, Dist. Santhal Perganas.

Col. 8: Serial number of the candidates in the Electoral roll of the Const. in which his name is included—P. S. Madhupur, serial No. 10 (ten) page No. 1 House No. 35.

The Returning Officer rejected his nomination papers making the following orders:—

“It is objected that in col. No. 8 the name of the village to which the candidate belongs is not mentioned without which serial number becomes meaningless. This is a major defect. Nomination papers rejected.”

It is undisputed that there are 400 to 500 villages within Narainpur Constituency and there is a separate electoral roll for each village having separate serial numbers beginning with No. 1. It is admitted by Shree Kedar Nath Pandey himself that necessarily in every village within Narainpur Constituency there was one voter No. 10. It is also not disputed before us that Shree Kedar Nath Pandey's serial number in the electoral roll was serial No. 10 of village Baherabank. The name of the village Baherabank having not been mentioned in col. No. 8 in the nomination papers of Shree Kedar Nath Pandey, the Returning Officer could not know the electoral roll of which village the serial No. 10 noted in col. No. 8 relates to, so as to identify the candidate Shree Kedar Nath Pandey. According to the foot-note (6) of the Form of nomination paper and according to the definition of “serial number of an elector in an electoral roll” given in Rule 2(d) of the Representation of the People Rules 1951, it is necessary to give the name of the village or the part to which the serial number of the elector in question relates so as to identify the entry relating to such elector in that electoral roll. It goes without saying that in the absence of the name of the village in col. 8 it was impossible for the Returning Officer to know the electoral roll of which of the numerous villages, serial No. 10 of Shree Kedar Nath Pandey relates to. We, therefore, hold that the omission of the name of the village in col. 8 is a defect of a substantial character, and not a technical defect as contended on behalf of the petitioner and Shree Kedar Nath Pandey (respondent No. 8).

It is contended on behalf of the petitioner and Shree Kedar Nath Pandey that under section 33 sub-section (5) of the Representation of the People Act 1951, on the presentation of a nomination paper the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates are the same as those entered in the electoral rolls; the Returning Officer having not pointed out at that time that the name of the village was not mentioned in col. 8 and having not directed the candidate in question to correct the mistake, the Returning Officer was not justified in rejecting the nomination papers at the time of the scrutiny for this defect alone. We do not agree to this contention. It appears that the Returning Officer either failed to examine the nomination papers at all or did not examine them closely to notice that the name of the village had not been mentioned in col. 8. But the failure of the Returning Officer to point out this mistake does not absolve the candidate from the duty which lay upon him to present a nomination paper duly filled up. There is nothing in the Act which debars the Returning Officer from rejecting a nomination paper on account of a mistake of a substantial character, which he failed to notice at the time of the presentation of the nomination paper.

Then it is contended that the name of the village to whose electoral roll Shree Kedar Nath Pandey's serial No. 10 related was mentioned in col. No. 5; and it was therefore the duty of the Returning Officer to look to col. No. 5, *suo motu*, in order to ascertain the name of the village to which Shree Kedar Nath Pandey's serial No. 10 related. We do not agree to this contention also. The name of the village given in the address in col. No. 5 does not necessarily mean that the serial number of the candidate relates to the electoral roll of that village. A candidate's serial number may relate to the electoral roll of one village and he may give his address of a different village or a different district altogether. The address of a candidate has no necessary connection with the village in whose electoral roll his name may appear as an elector. It will be noted that the petitioner Shree Rameshwar Prasad Singh himself is voter No. 144 of village Upardih within Narainpur Constituency; but in his election petition he has given his address as C/o Pandit Anant Sharma, Shree Tilak Kala Vidalya, Madhupur, P.O. Madhupur. This is, his name appears as an elector in the electoral roll of one village but he has given his address of another village. We are therefore of the opinion that there was no ground for the Returning Officer to presume or to think that the serial No. 10 of the candidate in question would be found in the electoral roll of village Baherabank mentioned in col. No. 5 and there was therefore no duty cast upon him to look into the electoral roll of Baherabank.

If the candidate in question, i.e., Shree Kedar Nath Pandey or his Agent was present at the time of the scrutiny and if anyone of them told the Returning Officer that serial No. 10 of the candidate would be found in the electoral roll of village Baherabank and that this village is mentioned in col. No. 5 as the address of the candidate, the Returning Officer should have looked into the electoral roll of Baherabank village before passing his orders. During trial Shree Kedar Nath Pandey has tried to make out such a case. He states in his evidence that when the omission of the village in col. 8 was pointed out at the time of the scrutiny, he asked the Returning Officer to look to his address where his village was noted and the Returning Officer replied that the omission of the village in col. 8 was a technical defect and was harmless. But we are unable to accept this evidence of Shree Kedar Nath Pandey. There is absolutely no mention either in the election petition or in the written statement filed by Shree Kedar Nath Pandey that Shree Kedar Nath Pandey or any Agent of his was present at the time of the scrutiny or made any such statement to the Returning Officer and that the Returning Officer gave any such reply. Were these allegations, made for the first time during the trial, true, they must have been stated either in the election petition or in the written statement of Shree Kedar Nath Pandey. It was also the duty of the petitioner or Shree Kedar Nath Pandey to examine the Returning Officer in this connection, which they did not do. The order of the Returning Officer rejecting the nomination papers of Shree Kedar Nath Pandey (quoted above) also goes to indicate that it was never pointed out to him at the time of the scrutiny that serial No. 10 of the candidate relates to the electoral roll of the village mentioned in the address. It should be further noted that two days after the rejection of his nomination papers Shree Kedar Nath Pandey withdrew his security money. It also appears from the Bihar Gazette (Extra-Ordinary), published on October 22, 1952 (Ext. A) that notification No. BR-A/52 (281), dated New Delhi dated August 30, 1952 was published in the Gazette noting that Shree Kedar Nath Pandey failed to lodge the return of election expenses within the time and in the manner required and has thereby incurred the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951. Since the rejection of his nomination papers on the date of the scrutiny, Shree Kedar Nath Pandey never filed any objection to the rejection of his nomination papers and never intended to dispute its correctness. Therefore his conduct also goes to show that the case which he now makes out during his evidence is not true. For these various reasons we are unable to accept this new case made out by Shree Kedar Nath Pandey during evidence. We must therefore hold that at the time of the scrutiny when it was pointed out to the Returning Officer that the name of the village was not noted in col. 8 without which the serial No. 10 becomes meaningless, none told the Returning Officer that this serial No. 10 would be found in the electoral roll of village Baherabank and none drew his attention in this connection to col. No. 5 where this village is mentioned as the address of the candidate.

Various cases have been cited before us on behalf of the petitioner and Shree Kedar Nath Pandey in this connection. But in all these cases the defect in the description given in col. 8 was either of a trivial nature or were such as not to lead to any confusion in the mind of the Returning Officer regarding the identity of the candidate in question. These cases therefore do not apply to the present case. In this connection the learned Advocate for the contesting respondent draws our attention to the case of Gondia General Rural Constituency (Mr. Malhar Rao

petitioner—versus—Mr. Bishnu Pant—respondent) reported in H. S. Doabia's Election Cases, Volume I page 206, the facts of which are similar to the present case, and in which the rejection of the nomination paper on account of the omission of the Sub-division in col. No. 8 was held to be valid.

We therefore hold that the omission of the name of the village in col. 8 in the nomination papers of Shree Kedar Nath Pandey was a defect of a substantial character and the Returning Officer was justified in rejecting his nomination papers on that ground. The only ground for which the petitioner seeks to set aside the election being thus found to be wrong, the election petition must be dismissed. In this view of the matter it is not necessary for us to go into and determine other issues raised on the allegations made by the contesting respondent No. 1 in his written statement.

We therefore order that the election petition be dismissed with costs of Rs. 200/- including pleader's fee payable by the petitioner to the contesting respondent No. 1
Shree Krishna Gopal Das

(Sd.) S. B. SENGUPTA, *Chairman.*

(Sd.) N. K. GHOSE, *Member.*

(Sd.) GOVIND SARAN, *Member.*

The 14th February 1953.

[No. 19/191/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on special duty.

